



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

May 3, 2023

BY ECF

The Honorable Andrew L. Carter, Jr.
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

USDC SDNY
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Re: *United States v. Reginald Fowler, S3 19 Cr. 254 (ALC)*

Dear Judge Carter:

The Government respectfully submits this letter on behalf of the parties in response to the Court's April 20, 2023 order directing the parties to file a joint status report by May 2, 2023 informing the Court "whether or not the defense still wants to call Mr. Engel, [and] whether or not the defense is seeking any sort of *Fatico* hearing." (Tr. 24).

The defense intends to cross-examine Brian S. Engel, and the Government has agreed to make Mr. Engel available for cross-examination on May 17, 2023. Beyond the defense's request to cross-examine Mr. Engel, neither party is requesting a *Fatico* or other factual hearing. The defense intends to raise *legal* challenges to, among other things, the Guidelines calculation set forth in the PSR and the Government's forfeiture request, but those legal challenges will not require a factual hearing.

On April 28, 2023, the defense sent the Government a letter making several demands "pursuant to the Federal Rules of Criminal Procedure, 18 U.S.C. § 3500 ("3500 materials"), *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny, and the Fifth and Sixth Amendments to the United States Constitution." The Government is preparing its response to that letter and will respond in advance of the May 17, 2023 sentencing. The defense position is that the provision of the materials and information it seeks is critical to its ability to prepare for sentencing, and therefore unless those materials and information are provided forthwith the defense does not believe that it will be prepared to go forward with sentencing on May 17th. In the Government's view, no adjournment is necessary.

As the Government noted on April 20, 2023, "if the sentencing is adjourned beyond the 17th, the [G]overnment will likely seek the defendant's remand pending sentencing." (Tr. 24). The defense position is that any adjournment of sentencing will be necessitated only so that Mr.

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Fowler counsel can be adequately prepared for sentencing, and that he should therefore remain at liberty until any new sentencing date.

Respectfully submitted,

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cc: Edward Sapone, Esq. (by ECF)

The parties shall file another joint status report on 5/12/23.
So Ordered.

Andrew L. Carter Jr.
5/11/23